

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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KEVIN MARTONE,

Plaintiff,

v.

**DECISION AND ORDER**  
16-CV-45-A

NANCY A. BERRYHILL, Acting  
Acting Commissioner of the  
Social Security Administration,

Defendant.

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This case was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings. On January 9, 2018, Magistrate Judge McCarthy filed a Report and Recommendation (Dkt. No. 16), recommending that Plaintiff Martone's motion for judgment on the pleadings (Dkt. No. 8) be granted and the matter remanded to the Acting Commissioner for further proceedings. Magistrate Judge McCarthy further recommended that the Acting Commissioner's motion for judgment on the pleadings (Dkt. No. 13) be denied.

The Court has carefully reviewed the Report and Recommendation and the record in this case, and no objections having been timely filed, it is hereby **ORDERED**, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, Plaintiff Martone's motion for judgment on the pleadings is granted and the matter is remanded to the Acting Commissioner for further proceedings consistent with the Report and

Recommendation, and the Acting Commissioner's motion for judgment on the pleadings is denied. The Clerk of Court shall take all steps necessary to close the case.

**IT IS SO ORDERED.**

*s/Richard J. Arcara*  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: January 29, 2018